

JOHN PARKS SIMPSON and FRED A
SIMPSON, wife,

Plaintiffs,

v.

AIR LIQUIDE AMERICA, LP; CELITE
CORPORATION; MINE SAFETY
APPLIANCES COMPANY; PORTER
WARNER INDUSTRIES, LLC; WESCO
REFRACTORIES, INC. and JOHN DOE
1-5,

Defendants.

AIR LIQUIDE AMERICA, LP; CELITE CORPORATION; MINE SAFETY APPLIANCES COMPANY; PORTER WARNER INDUSTRIES, LLC; WESCO REFRACTORIES, INC. and JOHN DOE
1-5,

Defendants.

Under Federal Rule of Civil Procedure 41(a), Plaintiffs and Defendant Celite Corporation (“Celite”) jointly move this Court for an order dismissing without prejudice Celite as a party to this action and state as follows:

Plaintiffs instituted this product liability action, naming Celite Corporation and a number of other parties as Defendants. At this stage in the discovery process, Plaintiffs and Celite have determined and agreed that Celite should be dismissed without prejudice. Specifically, discovery thus far has produced no identification of any Celite product that could have potentially caused Plaintiff John Parks Simpson's alleged injuries.

The voluntary dismissal of parties who have answered the Complaint requires a Court order pursuant to Federal Rule of Civil Procedure 41(a)(2). The parties respectfully submit that the Court should exercise its discretion in dismissing Celite from this action because no product of Celite's has been identified as being at issue in this litigation. Should such evidence emerge

during further discovery, Plaintiffs intend to re-file their claims against Defendant Celite as the rules permit. Accordingly, Plaintiffs and Celite request that the Court enter the attached proposed order designating this voluntary dismissal as Plaintiffs' first voluntary dismissal of Celite, which will not operate as an adjudication of the merits pursuant to Federal Rule of Civil Procedure 41(a)(1)(B).

CONCLUSION

For the foregoing reasons, Plaintiffs and Celite respectfully request that this Court grant their Joint Motion to Voluntarily Dismiss Without Prejudice Defendant Celite Corporation and enter the proposed Order attached hereto.

Jointly and respectfully submitted this 23rd day of June 2010 by:

JEKEL-DOOLITTLE, LLC

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s/Frederick Jekel (with Permission)

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

JOHN PARKS SIMPSON and FRED A
SIMPSON, wife,

Plaintiffs,

v.

AIR LIQUIDE AMERICA, LP; CELITE
CORPORATION; MINE SAFETY
APPLIANCES COMPANY; PORTER
WARNER INDUSTRIES, LLC; WESCO
REFRACTORIES, INC. and JOHN DOE
1-5,

Defendants.

CIVIL ACTION NO.:
3:09-CV-172-FDW-DSC

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed with the Court the foregoing The undersigned hereby certifies that a copy of the foregoing **PLAINTIFFS' AND DEFENDANT CELITE CORPORATION'S JOINT MOTION FOR ENTRY OF CONSENT ORDER VOLUNTARILY DISMISSING DEFENDANT CELITE CORPORATION WITHOUT PREJUDICE** which was served upon all counsel of record as listed on the docket of this Court via CM/ECF at the following addresses:

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Dated: June 23, 2010

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